

# ***HIGHLIGHTS OF THE BIPARTISAN INTELLIGENCE COMMITTEE FISA MODERNIZATION PROPOSAL October 18, 2007***

The bipartisan Intelligence Committee FISA bill fixes a number of deficiencies in the flawed Protect America Act that passed in August. Specifically, it strengthens our national security, protects the civil liberties and privacy rights of all Americans, and ensures that the unchecked wiretapping policies of the Bush Administration are a thing of the past.

## **STRENGTHENING OUR NATIONAL SECURITY**

The bill ensures that the Intelligence Community has the surveillance tools needed to go after foreign terrorists and other threats to American security. It allows the Attorney General and DNI to authorize the targeting of persons reasonably believed to be outside the U.S. for the purpose of collecting foreign intelligence for up to 1 year.

## **PROTECTING AMERICAN RIGHTS THROUGH MANDATED COURT REVIEW AND APPROVAL**

The bill strengthens the role of the FISA court by requiring judicial review and approval in four ways:

- **First**, the court must review the certification submitted by the Attorney General authorizing the foreign intelligence surveillance;
- **Second**, the court must approve the foreign targeting procedures for determining that the target of the surveillance is reasonably believed to be outside the United States;
- **Third**, the court must approve the procedures for minimizing the identities of and information about Americans incidentally collected during the surveillance of foreign targets – a glaring omission in the Protect America Act;
- **Finally**, the court will be required to approve or disapprove the targeting of Americans overseas under this new authority, on an individual basis, based on its review whether there is probable cause to believe that the person is an agent of a foreign power.

## **IMPROVED OVERSIGHT AND ACCOUNTABILITY**

The bill includes a 6-year sunset to allow Congress to evaluate how the new authorities are carried out and to ensure that abuses do not occur before authorities are extended further.

The bill requires the Intelligence Community to conduct an annual review and requires detailed semi-annual reports to be submitted to the Senate and House Intelligence and Judiciary committees concerning collections authorized in the bill -- including instances of non-compliance.

The bill also requires the Intelligence Community to conduct a yearly audit to determine whether foreign intelligence information, in fact, will be obtained.

In addition, the Inspectors General of the Department of Justice and elements of the Intelligence Community are authorized in the bill to conduct independent reviews of agency compliance with the court-approved acquisition and minimization procedures.

## **ENSURING THAT THE UNCHECKED WIRETAPPING POLICIES OF THE BUSH ADMINISTRATION ARE A THING OF THE PAST**

The Bush Administration's 5 ½ year warrantless surveillance program prevented both the judicial and legislative branches from conducting oversight of electronic surveillance. The Administration's decision to circumvent the FISA court and limit even cursory knowledge of the program's existence to only a handful of congressional officials was misguided and ultimately undermined the legitimacy and effectiveness of the program.

- The bill contains an exclusivity provision that reasserts that FISA and Title 18 are the exclusive means by which electronic surveillance may be carried out.
- By granting the authority to collect against identifiable foreign targets without requiring individualized court orders and by requiring court oversight of these activities, the bill effectively eliminates any justification for a President to seek unwarranted and unchecked surveillance.

## **IMMUNITY FOR TELECOMMUNICATIONS COMPANIES**

Private companies are essential partners in law enforcement and national security efforts. In the case of support following the 9/11 attacks, it is clear participation was based on what they believe to be lawful requests made by the government. The onus should be on the government to ensure that the requests it makes of private companies are fully supported by the law. While private citizens should be able to hold their government accountable, companies should not be put in the situation of complying with a legitimate security request and then being unable to defend themselves due to the government's assertion of state secrets.

- The bill provides narrowly circumscribed immunity to companies that may have participated in the warrantless surveillance program from 9/11 until it was placed under FISA court authorization in January 2007.
- The bill requires a certification to the court by the Attorney General that the company's participation was pursuant to a written request or directive of the Attorney General or intelligence agency head or deputy head and was part of program authorized by the President and determined to be lawful.
- Nothing in the bill provides retrospective immunity for government officials for their actions, nor to companies outside the specified timeframe.